Petition

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

J. ELWOOD CLEMENTS and CAROL J. SACHTLEBEN
Petitioners,

v.

LUCY N. LOGAN
Respondent.

On Appeal from the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was it error for the United States Court of Appeals for the Fourth Circuit to invalidate the practice of strip-searching DWI detainees upon confinement to the Arlington County Detention Center in light of this Honorable Court's decision and the principles announced in *Bell* v. *Wolfish*, 99 S. Ct. 1861 (1979), where a blanket policy of body cavity searches of all pretrial misdemeanants after each contact visit was held to be proper.

2. Was it error for the United States Court of Appeals for the Fourth Circuit to substitute its judicial judgment for the judgment of the Sheriff of Arlington County about the extent of the security interests affected in the Arlington County Detention Center and the necessity for the strip search procedure.

The parties hereto are J. Elwood Clements in his individual and official capacity; Carol J. Sachtleben, in her individual capacity, and Lucy N. Logan, in her individual capacity.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit decided October 7, 1981, Case No. 80-1815.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was made and entered on October 7, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution providing for protection against unreasonable searches.

The Fourteenth Amendment to the United States Constitution providing that no state shall deprive any person of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

At approximately 7:30 p.m. on March 6, 1979, the respondent Logan was involved in a two-car collision in Arlington County, Virginia. The investigating officer suspected that she had been driving while intoxicated and after administering a field alcoholic test, the officer placed her under arrest and she was transported to the police station for a breathalizer test. She was transported to the violations bureau and was advised of her rights and obligations under Virginia's implied consent law and arrangements made for a police officer to administer the required breathalizer test. The respondent insisted upon calling a lawyer friend before deciding whether or not to take the breatholizer test and such phone call was refused. She was then given a copy of Code Section 18.2-266-68 of the Code of Virginia to read. When she still did not make up her mind as to whether or not to take the breathalizer test the police officer again took her before the magistrate on duty in the violations bureau, who advised her again of her rights and obligations under the law. When the magistrate advised her of the law requiring the breathalizer test and the penalty for refusal, she decided to take the test. Instead of doing so, she put off the decision again and at approximately 9:55 p.m., the police officer obtained warrants from the magistrate charging her with DWI and unreasonable refusal under Virginia Code § 18.2-266-68.

The warrants were served upon her immediately and upon her request, the magistrate released her on her personal bond but told her that he would do so but that she would have to be

detained for four hours or until some reasonable person could come and get her and wrote on the commitment papers that she be permitted to use the telephone to call her lawyer friend.

At approximately 10:00 p.m., the respondent was taken to the Sheriff's office where a matron inventoried her personal property and took her to one of the first floor cells where she was strip-searched and secured in that cell. The strip search was conducted in private with no one being present but the matron and your respondent. She was asked to take off her clothes one at a time, to hand them to the matron and to turn around for visual inspection. She did so and her clothes were immediately returned to her. After the search was completed, which took less than five minutes, the respondent was secured in the cell and permitted to use the telephone. The respondent was placed in a cell block located on the first floor of the Detention Center. The cellblock contained five cells divided into two areas, one of three cells for men and two cells for women. This cellblock was used for all persons committed to the Dentention Center and to house persons in other areas of the Detention Center that were being transported to and from other facilities and to court. This cellblock at any time could house persons charged with misdemeanors to the most serious felonies and house persons who were detainees to those sentenced to serve substantial terms of years for felony convictions.

The Sheriff of Arlington County adopted the search policy in 1974 to prevent weapons and contraband coming into the facility for the protection of the inmates and personnel of the Detention Center. That policy provided that all persons committed to his custody and placed in the Arlington County Detention Center would be visually strip-searched for concealed weapons and/or contraband. The incident which resslted in the adoption of the policy and several others where drugs, weapons and other contraband were found in searches at the jail were set out in several "incident reports" which were admitted into evidence as the Sheriff's trial exhibits. See Appeal Docket Entry 61 at page 4 of the Appeal Joint

Appendix, Vol. I.[1] No evidence was presented that the policy had been administered in any way other than fairly and on a non-discriminatory basis for everyone committed by order of the court or magistrate to the Arlington County Detention Center. The respondent did not question that the Sheriff's search policy was adopted for the protection of the inmates and personnel in the jail or suggest that it was employed with an intent to punish any pretrial detainees housed therein. She offered no evidence to support any contention that intoxicated detainees should be treated differently than other detainees and offered no evidence that the Sheriff's policy was an exaggerated

[1] These incidents are summarized below with the numbers corresponding to the numbers of Sheriff's trial exhibits: (1,2,3) January 18, 1974; strip search revealed a .22 revolver inside a glove which was placed in crotch area of a woman under a sanitary napkin, (prior to the trial and as part pf the County's Motion for Summary Judgment, the arresting officer, Stewart Pell, submitted an affidavit stating that the woman was arrested for a bad check misdemeanor as she was taking her child to school); (4) May 23, 1974; strip search conducted after earlier pat down revealed illegal narcotics in inmate's clothing after inmate returned to jail after his trial; (5) May 5, 1976; detainee on charge of assault and battery found to have knife concealed in stomach area; inmate had been in looking area one and one-half hours before search by deputy sheriff; (6) August 2, 1976; detainee who had surrendered himself found to have drugs concealed in his socks when strip searched; (7) August 5, 1976; detainee on $30.00 bond for disorderly conduct found to have marijuana in his sock; (8) August 15, 1976; drunk in public detainee found to have marijuana in clothing; (9) February 18, 1977; upon admittance inmate found to have concealed knife; (10) September 1, 1976; search of shower area of jail revealed drugs and paraphernalia; (11) February 27, 1977; drunk in public detainee found to have a knife and marijuana; (12) August 26, 1976; inmate upon admitting himself to serve his weekend sentence was found to have concealed drugs taped to the inside of leg and in other places during search in admitting cell; (13) August 26, 1977; upon admitting himself to serve a sentence, inmate found to have marijuana taped to inside of leg of pants; (14) September 14, 1977, strip search revealed drugs concealed in cuffs of pants; (15) January 31, 1978; inmate in holding cell tried to hang himself with his shoelaces; (16) January 20, 1978, man arrested for drunk in public was not searched upon entry because of his filthy condition and as a result his sores and lice were not discovered; (17) April 2, 1978; knife found in first floor cell of man arrested for drunk in public; (18) August 10, 1978; woman detainee attempted to flush credit card and other evidence of crime in cell toilet; she had concealed these in her panties; (19) April 30, 1979; man arrested for DWI and refusal to take the breath test found to have plastic bag of marijuana during strip search on first floor.

response to the genuine security consideration that activated his strip-searched practice.

I. THE APPELLATE COURT'S INVALIDATION OF THE PRACTICE OF STRIP SEARCHING DWI DETAINEES UPON CONFINEMENT TO A JAIL CELL IS DIRECTLY CONTRARY TO THE PRINCIPLES ANNOUNCED IN BELL V. WOLFISH, WHERE A BLANKET POLICY OF BODY CAVITY SEARCHES OF ALL PRETRIAL MISDEMEANANTS AFTER EACH CONTACT VISIT WAS UPHELD.

One cannot read the opinion of the appellate court without coming to the conclusion that it prohibits the Sheriff of a jail from conducting strip searches unless he has probable cause to believe the inmate has a weapon or contraband on his person. One also cannot reconcile the court's holding that strip searches of persons held in jail for DWI and refusal is illegal when this Honorable Court, in the case of *Bell* v. *Wolfish,* 99 S. Ct. 1861 (1979), held a blanket policy of body cavity searches of all pretrial misdemeanants after each contact visit in the detention center to be valid without any need of probable cause or even reasonable suspicion.

Nowhere in the appellate court's decision is there a hint that the purpose of the policy was to punish Logan or others like her. Yet, it is beyond question that it is the "heavy burden" of the plaintiff in cases involving due process claims to show that the purpose of the practice was employed "with an intent to punish the pretrial detainees housed there." *Bell* at 1885. It was the plaintiff's failure to carry this burden that caused the district court to find for the Sheriff.

The expressed authority for striking down the strip search in this case was the decision of *Tinetti* v. *Wittke,* 479 F. Supp. 486, 490-91 (E.D. Wis. 1979), *aff'd* F.2d 120 (7th Cir. 1980). See Opinion at p. 14. The *Tinetti* case held invalid a strip search practice as applied to a woman detained in jail for speeding after she could not post a $40.00 cash bond. In Wisconsin, the charge was a nonmisdemeanor traffic offense whereas Logan was arrested for one of the most serious of

misdemeanors. The *Logan* appellate court also ignored the fact that the reasoning used by the *Tinetti* court (479 F. Supp. 490-91) was rejected by the subsequent decision in *Bell* v. *Wolfish*. The *Tinetti* court said:

> "The search procedure is unconstitutional because while it is rationally related to the objective sought, discovering weapons, *it is not the least intrusive means* which could accomplish the same result. . . ."
>
> * * *
>
> "Unlike pretrial detainees charged with a criminal offense, there is little reason to suspect that traffic violators[2] will conceal contraband or weapons, particularly when they are incarcerated solely due to their inability to post cash bail. Defendants' blanket strip search policy cannot be maintained when to do so intrudes into the personal dignity of traffic violators *without any relation to the likelihood of his concealment of weapons or contraband.* For the foregoing reasons, the policy as a matter of law, violates the Fourth, Fifth and Fourteenth Amendments to the United States Constitution." 479 F. Supp. at 491. (Emphasis Added)

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[2] In the *Tinetti* case and in the instant case, there is the emotional unfounded belief of the courts that persons charged with traffic offenses are not ever dangerous or likely to have a weapon. An examination of the United States Department of Justice Federal Bureau of Investigation Uniform Crime Reports at p.302, reveals exactly the opposite. During 1978 over 6,000 officers were assaulted during traffic pursuits and stops, 242 assailants had firearms, 75 had knives, and 1,088 had some other dangerous weapon. The United States Department of Justice, Federal Bureau of Investigation Uniform Crime Reports 1980 at p. 333 indicates that 6,277 officer were assaulted during traffic pursuits and stops, 190 assailants had firearms, 86 had knives and 1,091 had some other dangerous weapon. Assuming that such persons might be committed to jail for some period, it would be prudent to thoroughly search them prior to confinement. Pat downs at the arrest scene may or may not be effective in finding weapons. For example, see the article from the *Washington Post*, March 3, 1981, at p. B1, where a drunk driver who was patted down by police was later found to have a handgun concealed in his abdomen area.

Of course, in this case Logan was arrested for a serious crime, and in any event *Bell* v. *Wolfish* rejected a "least intrusive means" test and rejected the need to show that there is in fact a reason to believe the person is armed or carrying contraband.

The *Bell* v. *Wolfish* case established several principles which were not mentioned in the appellate court's decision. First, the test of constitutionality under due process is not whether the court thinks the practice is "reasonable," but whether the practice was conducted with an intent to punish the detainee. *Bell* at 1873-74. There must be no reasonable relationship between the search and the goal of jail security. *Bell* recognized that strip searches are reasonably related to jail security in all misdemeanor cases.

Second, the burden is on the plaintiff to prove that the search was either expressly punishment or was without a purpose. *Bell* at 1886. Logan produced no one with expertise in running a jail to rebut the considered judgment of the Sheriff. Nonetheless, the court substituted its own judgment and accepted the unsupported conclusions of Logan.

Third, the existence of prior incidents of weapons or contraband being found is not necessarily indicative of the effectiveness of the practice. See *Bell* at 1884-85, where the court noted that only one instance of the smuggling of contraband was produced in the case of the MCC (Metropolitan Correctional Center) facility, and that the existence of only one example was a very good showing of the practice's deterrence value. Finally, the *Bell* court rejected a least instrusive means test. *Bell* at 1885, fn. 40. Despite this, the appellate court expressly relied upon the precedent of *Tinetti* v. *Wittke, supra,* which was based upon such reasoning.[3]

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[3] Although the policy of the Sheriff can also be upheld as a search incident to arrest, the circuit court did not address this justification for the search policy. The circuit court invalidated the policy stating that Logan was not patted down by the police prior to her placement in a cell, and that persons arrested for DWI and refusal were not likely to be carrying weapons or contraband. Because of this a strip search was improper, and the obvious

(footnote continued)

II. THE APPELLATE COURT BASED ITS DECISION ON FACTS WHICH ARE NOT IN THE RECORD AND UPON CONCLUSIONS WHICH REPRESENT THE COURT'S SUBSTITUTION OF ITS JUDGMENT FOR THAT OF THE OFFICIALS CHARGED WITH OPERATING THE JAIL.

The several factual errors of the appellate court are set out below:

(1) The court found that the search "bore no discernible relationship to security needs at the Detention Center . . ." Opinion page 13. Nowhere does the court state the basis of this conclusion. In fact, the Sheriff produced as evidence the reports of several incidents where contraband and weapons were found on persons arrested for various misdemeanors when the persons were searched in the so-called "holding area." See Sheriff Clements' list of witnesses and exhibits, and note that they were admitted into evidence pursuant to the trial court's pretrial order since no objection was filed by the plaintiff. The Sheriff

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(footnote continues)

import of this decision is that persons charged with such crimes cannot be thoroughly searched incident to an arrest. Further, the decision would forbid thorough searches of the person of an arrestee unless conducted immediately upon arrest. The First Circuit has held that a post-arrest search of a suspect requiring him to remove his clothes and submit to a visual inspection of his person is lawful. *United States* v. *Klein*, 522 F. 2d 300 (1st Cir. 1975). When the arrest is lawful, a subsequent thorough search of the person and property in his control is proper without any additional justification being necessary. See *United States* v. *Robinson*, 414 U.S. 218 (1973); *Gustafson* v. *Florida*, 414 U.S. 260 (1973). A brief pat search may be conducted at the scene and a more thorough and deliberate search may be conducted as soon as the person is in a place where such a search can be performed without public embarrassment. Moreover, in *United States* v. *Edwards*, 415 U.S. 800 (1974), the court said that an accused could be required to relinquish his clothes so that they could be searched even though the administrative mechanics of arrest have been completed and the person is incarcerated. Not only is the *Logan* decision directly contrary to *United States* v. *Klein*, but it is directly contrary to the decisions in *States* v. *Magness*, 565 P. 2d 194 (Ct. of App. Ariz. 1977) (strip and body cavity search of person arrested for smuggling drugs valid), and *People* v. *Seymour*, *supra* (person arrested for misdemeanor weapons charge may be strip searched at lock-up facility where he was patted down earlier by police).

testified that the policy was promulgated to protect the employees, inmates from the harm that could be caused by the introduction into the secured area of a weapon or some other contraband.

It is incredible that a court could state that a search specifically designed to find weapons and contraband and upheld in *Bell* v. *Wolfish,* could be said to have no "discernible relationship"to security needs at the jail. No one doubts that such searches are intrusive, but the principles in *Bell* do not allow a court to ignore the considered judgment of the officer charged with operating the jail.

Equally incredible is the court's assumption that an intoxicated person is not likely to be carrying drugs or other contraband. This is particularly true since Logan refused to take a breath test and thus, the cause of her intoxication was unknown.

(2) At no time would Logan or similar detainees be intermingled with the general jail population. Opinion pages 13-14. This is a conclusory argument made by Logan and the Amici, and apparently accepted as fact by the appellate court. But as pointed out by the Sheriff at page 6 of his brief, the evidence at trail showed exactly the opposite. The area of the jail which is involved in the case is composed of five cells, and it is itself a small jail where the inmates could pass weapons or drugs between themselves or use weapons on the officers in the area. Moreover, it is *not* distinct from the "general jail" population. Inmates are moved around between this area of five cells and the upper floors when overcrowding occurs (J.A.Tr. 181-183, 194) and, of course, inmates in the five cells would be shifted to the upper floors if they could not make bail in a few hours.

(3) The court found that the offenses of driving while intoxicated and refusing to take a breath test are "not commonly associated" with the possession of weapons or contraband, and there was no reason to believe she had either. Opinion at page 14. The court's conclusion is directly contrary to common sense especially since Logan's intoxication was of

an unknown origin. Moreover, the court's assumption is unsupported by any evidence in the record. One need only examine published statistics on Crime in the United States, to see that persons stopped for traffic offenses committed eleven percent of all assaults on police officers in 1978 and 1980; of this group twenty-two percent used weapons (of all kinds) to assault and kill officers. The court's unsupported assumption that DWI and refusal arrestees do not commonly carry weapons or contraband shows the fundamental error of the court —that one can be strip searched in a detention facility only when there is some reason to believe a weapon or contraband is possessed. This position is directly opposite the rule announced in *Bell* v. *Wolfish.*

(4) The court stated that Logan was "at the detention center for one and one-half hours without even a pat-down search." The statement is erroneous and stems from Logan's and the Amici's imprecise references to the "detention center." As was pointed out in the Sheriff's brief, there is one building which houses the separate police department, magistrate and the jail. Logan was in the custody of the police for purposes of taking the required breath test and for the bond hearing. She was brought to the police station at 8:20 p.m. and in police custody until 9:50 p.m. when she was transferred to the Sheriff's custody. It was at that point and not before that Logan entered the jail area or cell. Whether the police should have searched Logan prior to Logan entering the cell area is not an issue in the case. The issue is whether it is permissible to strip search serious misdemeanor detainees immediately upon their commitment to the cell area of a jail in order to preserve the jail's security and protect the persons in that cell area.

In this regard, it is quite odd that the appellate court did not mention the decision of *People* v. *Seymour,* 416 N.E.2d 1070 (s.Ct. Ill. 1981), provided to the court by the Sheriff. In that case, the detainee was strip searched after having been patted down twice before. The court said that an arrestee (there the arrest was for carrying a concealed weapon) can be strip searched either as a search incident to an arrest or to maintain the security of the jail. Although arrested on a

weapons charge, the police found drugs taped to the back of the detainee. There is even less reason to believe a person arrested for a weapon charge would have drugs than there is to believe a person arrested for drunk driving will have drugs. Further, the key time is when the person is locked up, not the prior processing, for it is there that the danger is most evident *if* a person has drugs or a weapon. It is at that point that common sense tells us that an intoxicated person is most likely to use a weapon or ingest drugs. In the statement of the case above several incidents are listed where weapons and contraband were found by the Sheriff's deputies even after the arresting officer conducted a preliminary search. The appellate court in *Logan* would have the Sheriff assume, at the risk of his deputies' and other inmates' safety, that since the arresting officer did not search the detainee during the administrative police process, then there is no legitimate need for the Sheriff to search them either. The Sheriff simply cannot make such an imprudent assumption.

CONCLUSION

Respondent was arrested by an Arlington police officer for driving while intoxicated. For over two hours following her arrest, respondent refused to permit law enforcement officers to conduct a blood or breatholizer test to determine the nature and extent of her intoxication. Under orders from the state magistrate, the Arlington County Sheriff's Department was required to assume custody over respondent for four hours or until a responsible person could come and get her. At that time, employees of the Sheriff's Department determined that—as in the case of other pretrail detainees-respondent should be secured in a cell. Because of the threat that misdemeanor arrestees may possess weapons or contraband—a threat demonstrated nationwide and in Petitioners' previous experience—respondent was subjected to a strip search by means of visual inspection prior to her placement in a secured cell. This search was conducted in compliance with the Department's internal regulations. The search did not involve wanton, "arbitrary and capricious conduct", *Bijeol* v. *Benson,* 404 F.

Supp. 595, 600 (S.D. Ind. 1975), on petitioners' part. The evidence at trial failed to show the search was conducted under unsanitary conditions, or the petitioners attempted to humiliate or degrade respondent. See *Daugherty* v. *Harris*, 476 F.2d 292, 295 (10th Cir. 1973).

Yet the Fourth Circuit Court of Appeals, while paying lip service to this Court's teaching in *Bell* v. *Wolfish*, ignored the legitimate security concerns adduced in support of petitioners' strip search policy. Although these concerns were at least as substantial as those upon which the *Bell* decision was based, the Court below in essence has required that the strip search of any detainee lawfully confined in the Arlington County jail be conditioned upon probable cause to believe that detainee is concealing contraband. Such a standard may expose law enforcement personnel and prisoners within the Fourth Judicial Circuit to undue risk of bodily injury. There are many jails and detention facilities where persons charged with offenses ranging from misdemeanors to serious felonies must be housed and co-mingled together because of the physical layout or space limitations of those facilities. If the ruling of the Fourth Circuit is allowed to stand, the security of these facilities will necessarily be impaired because a certain class of misdemeanor detainees, namely those charged with DWI and Refusal, cannot be thoroughly searched for weapons and contraband before being mixed with other inmates. The result must be an increased threat to the lives and safety of the inmates and employees of all detention facilities. The situation is further aggravated and becomes more serious because of the lack of adequate staffing that exists in many jails and detention facilities. Moreover, it ignores this Court's admonition that the judicial branch of government defer to the expertise of prison and law enforcement administrators in matters concerning internal order, discipline, and institutional security. How can detention facility officials effectively keep contraband and weapons out of their facilities if they can only make a through search when a detainee exhibits such extraordinary behavior that it gives rise to probable cause. In our experience those persons concealing contraband and weapons take great pains to

assure concealment and in those instances officials will rarely find probable cause to search. For the foregoing reaons, petitioners respectfully pray this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

CIVIL ACTION NO. 80-210-A

LUCY N. LOGAN,

Plaintiff,

v.

NORRIS SHEALY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This § 1983 suit for damages and for declaratory and injunctive relief for violation of plaintiff's Constitutional rights by various present and former officers of Arlington County, Virginia grew out of her arrest and commitment for driving while intoxicated, and her unreasonable refusal to take a breathalyzer test as provided for by § 18.2-286(c)(n) of the *Code of Virginia.*

She claims she was denied her Constitutional right to the assistance of counsel and to be free from unreasonable searches, and has asked this Court to permanently enjoin and restrain the defendants from maintaining and/or enforcing any policy or practice which denies those charged with driving while intoxicated from consulting with their attorney upon request—and which subjects those so charged and committed to being strip-searched, unless the Sheriff or his deputies have reasonable grounds to believe that contraband and/or weapons are being concealed on such person.

The case was heard on the merits, and the claim for damages was dismissed—the claim for declaratory and injunctive relief was deferred pending further briefing and argument of counsel—those briefs have now been filed and considered.

There was little, if any, dispute as to what happened on the day in question:

The plaintiff admits that she had had two drinks shortly prior to the time (about 7:30 p.m.) she became involved in a two-car accident just beyond the intersection of Courthouse Road and Arlington Boulevard.

Officer Shortt, the investigating police officer, after interviewing and observing the plaintiff, suspected she might be under the influence of intoxicating beverages.

He gave her the requisite field tests and told her that he would have to take her to the Violations Bureau for the required breathalyzer test.

She insisted upon first calling her lawyer friend, Lorelei Haig, whom she had just dropped off a few minutes before the accident.

The officer would not let her leave the scene to make the call—after some 30 minutes, she was taken to the Violations Bureau in one of the police patrol cars—her automobile driven by the police followed.

They arrived at the Violations Bureau at about 8:15 p.m.—Officer Shortt got there about 8:20 p.m.

He again advised her of her rights and obligations under Virginia's "implied consent" law, and made arrangements for one of the more experienced police officers to administer the required breathalyzer test.

The plaintiff again insisted upon talking to Lorelei Haig before deciding whether to take the test—she said she wanted somebody there on her side.

She was not allowed to make the requested telephone call.

When she couldn't or wouldn't make up her mind, she was given a copy of § 18.2-266-68 of the *Virginia Code* to read.

When she kept stalling for the better part of an hour, Officer Shortt had the Magistrate on duty advise her of her rights and obligations under the law.

When the Magistrate advised her of the law requiring the breathalyzer test, and the penalty for refusal (revocation of driver's license for 90 days), she decided to take the test.

Instead of so doing, she stalled for another ten minutes or so.

Officer Shortt (at approximately 9:55 p.m.) then obtained warrants from Magistrate Vance charging her with DWI and unreasonable refusal under *Virginia Code* § 18.2-266-68.

The warrants were served upon her immediately—and she asked the Magistrate to release her on her personal bond—he told her that he would do so but that she would have to be detained for four hours or until some responsible person could come and get her—she said she could get someone to come if she could use the telephone.

The Magistrate wrote on the commitment papers that she be permitted to use the telephone to call her lawyer friend.

She was taken to the Sheriff's office at approximately 10:00 o'clock—a matron inventoried her personal property and took her to one of the holding cells where she was strip-searched for concealed weapons.

The strip-search was conducted in private, with no one being present but the matron and the plaintiff. She was asked to take off her clothes, one at a time, to hand them to the matron, and to turn around for visual inspection. She did so and her clothes were immediately returned to her.

After the strip-search had been completed, which took less than five minutes, the plaintiff was allowed to use the telephone. She called her lawyer friend who came and got her about an hour later.

The plaintiff is a practicing attorney in Arlington and was a former Assistant Commonwealth Attorney—she knew one of the Magistrates.

The record is silent as to whether she knew any of the policemen or deputy sheriffs who were on duty that night, or whether any of them knew her.

No one has a Constitutional right to leave the scene of an accident to call their lawyer while their sobriety is being checked—or to have their lawyer present or to talk with her on the telephone in re whether or not she should take the required breathalyzer or blood test.

The plaintiff knew, or should have known, as practicing and former Assistant Commonwealth Attorney, that such blood or breath test must be taken within two hours from the time of the alleged offense.

The accident in question occurred at about 7:30 p.m. It took her until almost 10:00 o'clock to make up her mind as to whether or not she was going to take the breathalyzer test, after having been fully advised by both the arresting officer and the Magistrate of the law requiring that a blood or breath test be taken and the penalty for refusing.

The warrants for her arrest for DWI and unreasonable refusal were issued and served upon her at approximately 10:00 p.m.

One's Sixth Amendment right to counsel does not accrue immediately on arrest pursuant to a warrant. *See* United States v. DuVall (2d Cir. 1976) 537 F.2d, at p. 15—it does not accrue until "at least at, or after the time judicial proceedings have been initiated—whether by way of formal charge, preliminary hearing, indictment, information or arraignment." *See* Brewer v. Williams, 430 U.S. 387 (1977).

No judicial proceedings were pending against Ms. Logan when she requested the investigating police officer to allow her to call her lawyer friend—she was allowed to call her lawyer within five or ten minutes from the time she was formally charged.

The plaintiff conceded that Officer Shortt had probable cause to arrest her on the night in question. Her Sixth Amendment right to counsel on the night in question was not abridged—and the Court so holds.

The plaintiff does not question that the Sheriff of Arlington County adopted the policy in 1974-1975 (after one of his deputies had been shot by a misdemeanant who had not been strip-searched), that all persons committed to his custody would be strip-searched for concealed weapons and/or contraband—or that the policy had been administered on a non-discriminatory basis since that date. She simply points out that she had been in custody [of the arresting officer] unsearched for more than an hour before she was strip-searched [by the matron]—that she came into contact with no one who was not a law enforcement officer—and that she certainly did not expect to be detained—thus she had no reason to attempt to smuggle contraband into the jail. She further points out that the cell in which she was held could have been constantly monitored by the correctional officers at the jail if they had any reason to believe that she might have any weapons or contraband concealed on her person.

The Supreme Court of the United States, in *Bell* v. *Wolfish*, 441 U.S. 520 (1979), in dealing with the question of whether visual body cavity inspections as contemplated by the Metropolitan Correctional Center can ever be conducted on less that probable cause held:

> "Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can."

In reaching that conclusion, Justice Rehnquist said:

> "Assuming for present purposes that inmates, both convicted prisoners and pretrial detainees, retain some Fourth Amendment rights upon commitment to a corrections facility, we nonetheless conclude that these searches [strip] do not violate that Amendment. The Fourth Amendment prohibits only unreasonable searches, and under the circumstances, we do not believe that these searches are unreasonable."

The plaintiff does not question that the Sheriff's "strip search" policy was adopted for the protection of the inmates and personnel in the jail or suggest that it was employed with an intent to punish the pretrial detainees housed therein. She simply argues that those committed for Driving While Intoxicated need not be strip-searched, unless the jailer has reason to believe they are carrying concealed weapons.

She offered no evidence to support her contention that intoxicated detainees should be treated differently than other detainees.

As was noted in *Bell, supra*:

> "A detention facility is a unique place fraught with serious security dangers.
>
> * * *
>
> "Smuggling of . . . weapons, and other contraband is all too common an occurrence.
>
> * * *
>
> "Ensuring security and order at the institution, is a permissible non-punitive objective whether the facility houses pretrial detainees, convicted inmates or both."

The burden is on the plaintiff of showing that the Sheriff of Arlington County has exaggerated his response to the genuine security consideration that activated his strip-search practice.

She has failed to so prove—her cited cases were concerned with minor traffic offenses, punishable by fine only—her charge was more than a minor traffic offense. DWI is a Class 2 misdemeanor, punishable by confinement for up to six months and a fine of $500.00, or both.

Unreasonable refusal (§ 18.2-268) calls for mandatory suspension of a driver's license for 90 days for the first offense, and up to 6 months for the second and subsequent offenses.

Although the detention center in *Bell* was a short-term federal custodial facility, the Supreme Court's decision therein is binding on all state as well as federal custodial facilities.

Whether the plaintiff should have been committed to the custody of the Sheriff for four hours, or until some responsible person came to get her—need not be further answered (enough was said by the Court during the trial). After she was lawfully committed by the Magistrate on duty to the custody of the Sheriff, he was duty-bound to treat her the same as he treated all other detainees. The deputy sheriff [matron] did just that.

Therefore, her Fourth Amendment right to be free from unreasonable searches has not been abridged. She was lawfully strip-searched on the night in question, and

The Court so holds.

Her prayer that the Sheriff of Arlington County be permanently enjoined from strip-searching those committed to his custody on the charge of Driving While Intoxicated unless he has reason to believe they are carrying concealed weapons on their person must be DENIED, and

IT IS SO ORDERED.

The Clerk will send a copy of this Memorandum Opinion and Order to all counsel of record.

.....

Senior United States District Judge

September 30, 1980.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 80-1815

LUCY N. LOGAN

Appellant,

versus

NORRIS SHEALY, EARL L. JOHNSON, JR., WILLIAM F. VANCE, J. ELWOOD CLEMENTS, JAMES A. GONDLES, THOMAS W. SHORTT, CAROL J. SACHTLEBEN, ARLINGTON COUNTY, VIRGINIA

Appellees,

and

HENRY E. HUDSON, ROBERT E. TURNER, HENRI NAVA, WILLIAM S. BURROUGHS, JR.,

Defendants.

American Civil Liberties Union of Virginia and the American Civil Liberties Union Fund of the Nat'l Capital Area, /A Amici Curiae.

Appeal from the United States District Court for the Eastern District of Virginia at Alexandria. Oren R. Lewis; Albert V. Bryan, Jr., District Judges.

Argued June 4, 1981. Decided October 7, 1981

Before WINTER, Chief Judge, HAYNSWORTH, Senior Circuit Judge and PHILLIPS, Circuit Judge.

Thomas A. Guidoboni for Appellant; Jerry K. Emrich, Arlington County Attorney (David R. Lasso, Assistant County Attorney on brief) for Appellees Shealy, Johnson, Vance, Shortt & Arlington County; Claude M. Hilton for Appellee Clements;

Peter T. Tonnessen (Albert J. Ahern on brief) for Appellee Sachtleben; (Clausen Ely, Jr., Donna M. Murasky, Ellen J. Flannery, Covington & Burling on brief) for Amici Curiae.

PHILLIPS, Circuit Judge:

Lucy Logan appeals the rejection by summary judgment and directed verdict of her several claims brought under 42 U.S.C. § 1983 and state law, against Arlington County and various judicial, prosecutorial, and law enforcement officers whose conduct incident to her arrest, detention, and strip search allegedly violated rights protected by the federal constitution and state law. We affirm the dismissal of all her claims except those related to the strip search of her person. As to those, we reverse and remand for further proceedings against certain of the defendants.

I

At approximately 7:30 p.m. on March 6, 1979, Logan, an attorney, was involved in a two-car collision in Arlington County, Virginia. The investigating officer, Thomas Shortt, suspected Logan had been driving while intoxicated. After giving Logan field alcoholic tests which she failed, Officer Shortt placed Logan under arrest and told her that he was taking her to the police station for a breathalyzer test. Logan asked to call her friend, Lorelei Haig, also an attorney, because the two had been together shortly before the accident and Haig knew how much alcohol Logan had consumed. Officer Shortt refused to permit the call and had Logan transported to the Arlington County Detention Center in a police cruiser. Logan arrived at the Detention Center at approximately 8:20 p.m.; Officer Shortt arrived shortly thereafter. Logan's car was impounded.

The exact sequence of events following Logan's arrival at the Detention Center is in some dispute on the testimony adduced at trial. Logal testified that she was taken before a

magistrate,[1] who issued an arrest warrant for driving while intoxicated (D.W.I.), Va. Code § 18.2-266 (Cum. Supp. 1981); that Officer Shortt then took her for a breathalyzer test; that she requested permission first to make a telephone call to Lorelei Haig which Officer Shortt refused to permit; and that Officer Shortt then took her back to the magistrate, who issued a second warrant for her refusal to take the test in violation of Virginia's implied consent law, Va. Code § 18.2-268 (Cum. Supp. 1981). Officer Shortt's version is somewhat different. He testified that Logan first was taken to the breathalyzer unit, where she refused to take the test before calling Haig; that he refused Logan permission to make the call because he understood that she had no legal right to contact an attorney at that time; that when Logan still refused to take the test, he took her before Magistrate Vance, who persuaded Logan to take the test; that he, Officer Shortt, then took Logan back to the breathalyzer unit, where she again refused to be tested before calling Haig; and that he immediately returned her to the magistrate who issued the arrest warrant for D.W.I. and the second warrant for Logan's refusal.

In any event, after both warrants had been issued, Logan was booked and again went before the magistrate for a bond hearing. Logan testified that Magistrate Vance released her on her own recognizance, but then told Logan that according to a policy she would be unable to leave the Detention Center for four hours or until a responsible person came for her. Magistrate Vance denied that there was a firm policy to hold all D.W.I. arrestees for four hours to assure their sobriety. In this case, however, he directed that Logan was to be held for that length of time or until a responsible person took custody of her and she was then to be released upon personal recognizance. Magistrate Vance also did not permit Logan to call Haig because the magistrates' office did not have a phone available for arrestees' use and he understood that the sheriff would permit the call; Vance therefore informed Logan that she could

[1] Logan could not remember the magistrate before whom she appeared. Chief Magistrate Shealy was not present on March 6, 1979, and Magistrate Johnson, who knew Logan, asked Magistrate Vance to process her.

make a telephone call upon commitment to jail. Officer Shortt then turned Logan over to the sheriff's custody at approximately 9:50 p.m. and left.

Logan immediately asked Deputy Sheriff Carol Sachtleben[2] for permission to call Lorelei Haig. In accordance with then Sheriff Clements' policy, however, Deputy Sachtleben first inventoried Logan's personal property and then took her to a holding cell and conducted a visual strip search. Sheriff Clements had established this policy—to strip search all persons held at the Detention Center for weapons or contraband regardless of their offense—in 1974-75 after a deputy allegedly was shot by a misdemeanant who had not been strip-searched. Logan testified that the window blinds in the holding cell were either open or broken and permitted anyone in the booking area to observe her strip search. Deputy Sachtleben testified that the blinds were closed and no one could see into or out of the holding cell during the search. Once the strip search was completed, Deputy Sachtleben brought a telephone to the holding cell and Logan called Lorelei Haig. At 10:55 p.m., Logan was released to Haig.

Logan subsequently brought this action for damages and for declaratory and injunctive relief under 42 U.S.C. § 1983, alleging the deprivation of various civil rights.[3] Her § 1983 claims were basically three.

The first claim related to the denial of Logan's request to make a telephone call. The actions of Magistrates Johnson and Vance, Police Officer Shortt, Deputy Sheriffs Sachtleben and Turner, and Correctional Officer Nava in refusing her permission to call her attorney, Lorelei Haig, until after the strip search was completed even though the two arrest warrants had

---

[2] According to her amended complaint, Logan was turned over to Deputy Sheriff Robert Turner and Correctional Officer Henri Nava, who escorted her to Deputy Sheriff Carol Sachtleben.

[3] Logan also asserted various pendent state claims which were later dismissed.

issued earlier[4] were claimed to have violated her sixth amendment right to the assistance of counsel.

The second claim related to Logan's detention. She alleged that either Magistrate Johnson or Vance or both ordered her to be committed to the Arlington County Detention Center for approximately four hours, after releasing her on her personal recognizance, pursuant to a policy of Arlington County to detain all D.W.I. arrestees for that length of time regardless of their individual circumstances. According to Logan's allegations, this policy was promulgated by Chief Magistrate Norris Shealy and William Burroughs, who was the Commonwealth Attorney for Arlington County in March 1979 when Logan was arrested, while the three magistrates—Shealy, Johnson, and Vance—continued to enforce it upon the advice of the present Commonwealth Attorney, Henry Hudson. Application of this detention policy was claimed to violate her fourth amendment right to be free from unreasonable seizure, her eight amendment rights to be free from excessive bail and from cruel and unusual punishment, and her fourteenth amendment right not to be deprived of her liberty without due process of law. Hudson was sued in his official capacity only; the other defendants were sued in their individual and official capacities.

Logan's third claim concerned the strip search. It was brought against Officer Shortt, Deputy Turner, and Correctional Officer Nava, who escorted her to Deputy Sachtleben; against Sachtleben who allegedly conducted the search in an area exposed to public view; against then Sheriff Clements who promulgated the policy; against Magistrate Shealy and then Commonwealth Attorney Burroughs who advised adoption of the policy; against present Sheriff Gondles who continued to enforce the policy; and against Arlington County whose policy it was alleged to be. The policy as enforced was alleged to be unreasonable in scope and manner, being conducted without a

[4] In her brief on appeal, Logan also asserts this claim against Arlington County. We decline to address the contention because Arlington County was not included as a defendant with respect to this claim in Logan's amended complaint, no evidence was presented at trial, and we find the claim to be without merit.

warrant or probable cause, hence to violate unspecified fourth and fourteenth amendment rights, and to constitute cruel and unusual punishment in violation of the eighth amendment. Gondles was sued in his official capacity only; the other defendants were sued in their individual and official capacities. This claim as well as the second was asserted against Arlington County on the basis of *Owen* v. *City of Independence*, 445 U.S. 622 (1980), and *Monell* v. *Department of Social Services*, 436 U.S. 658 (1978).

In addition to seeking compensatory and punitive damages from defendants Shealy, Johnson, Vance, Burroughs, Clements, Shortt, Turner, Nava, Sachtleben, and Arlington County, Logan prayed for a declaration that the telephone call, detention, and strip search policies were unconstitutional and for a permanent injunction restraining Shealy, Johnson, Vance, Hudson, Gondles, and Arlington County from enforcing those policies.

Before trial, on Logan's motion, the district court dismissed the claims for monetary relief against the present Commonwealth Attorney, Hudson, and the present Sheriff, Gondles, and all claims against Deputy Turner and Correctional Officer Nava. The remaining defendants moved for summary judgment, and the court granted partial summary judgment to the three magistrates on the claims for monetary relief because of their judicial immunity, and summary judgment on all claims to ex-Commonwealth Attorney Burroughs. The other defendants' motions were denied. At this point there remained for disposition the claims for declaratory and injunctive relief alleged in respect of the telephone call, detention, and strip search policies variously against Magistrates Shealy, Johnson, and Vance, Commonwealth Attorney Hudson, Sheriff Gondles, and Arlington County and the claims for damages alleged against Officer Shortt on the denial of counsel claim, Arlington County on the four-hour detention claim, and Arlington County, Sheriff Clements, Deputy Sachtleben, and Officer Shortt on the strip search claim.

The case proceeded to trial before a jury on all the claims for monetary relief. At the close of the plaintiff's evidence, the

district court directed a verdict for Arlington County on the detention claim on the basis of a failure to prove the existence of any policy under which magistrates were directed to hold all persons arrested for D.W.I. for four hours and on the basis that Logan's detention until Haig's arrival was, under the circumstances, reasonable.[5] At the close of all the evidence, the district court directed verdicts for all the individual defendants.

The district court held that on the evidence presented, Officer Shortt's defense of good faith immunity to the denial of counsel claim was established. Assuming Logan had a constitutional right to make the telephone call, Officer Shortt had simply followed standard procedures, binding upon him, in denying it before she was processed.

Similarly it found that Deputy Sachtleben's good faith defense was established. She had relied in good faith on the Sheriff's policy in conducting the strip search and had performed the search in accordance with that policy. Even if the blinds were open, there was no evidence that anyone had in fact looked into the holding cell during the search.

Finally, even though Sheriff Clements had stipulated that he had instituted the across-the-board strip search policy, the court also directed a verdict for Clements on the stated, unelaborated basis that while he had instituted the policy, he was not liable for enforcing it.[6] Notwithstanding this disposition

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[5] Though the strip search claim for damages against Arlington County had not been formally dismissed before trial, it was not addressed by the court at trial. On appeal the County has contended that the claim was formally abandoned by Logan in pre-trial conference, a contention not conceded by Logan. We cannot resolve that on the record before us, and the question will have to be addressed by the trial court on the remand we direct.

[6] The exact basis for the court's directed verdict in favor of Sheriff Clements is not clear from the record. Theoretically it could have been on either of two grounds: that the strip search policy was, as a matter of law, not shown to be unconstitutional, or that, assuming its unconstitutionality, the evidence conclusively established Clements' good faith in promulgating it, hence his immunity to the monetary claim. While the good faith defense is not directly adverted to, the district court's subsequent consideration of the claim for declaratory and injunctive relief in respect of the strip search policy strongly suggests that good faith rather than constitutionality was the basis for the directed verdict ruling at the time it was made. In view of our disposition, the exact basis is immaterial.

of the strip search damage claim against Sheriff Clements, the court nevertheless expressed concern whether the policy might require modification to pass constitutional muster, and instructed the parties to present additional authority on the constitutional issue in connection with Logan's remaining claims for declaratory and injunctive relief.

After posttrial briefing and argument, the district court denied Logan's request for declaratory and injunctive relief as to both the telephone call, detention, and strip search policies. *Logan* v. *Sheahy,* 500 F. Supp. 502 (E.D. Va. 1980). The court ruled that Logan's sixth amendment right to counsel was not abridged. She was allowed to call her attorney shortly after being formally charged and the right does not accrue immediately upon arrest. *Id.* at 505 (citing *United States* v. *DuVall,* 537 F.2d 15 (2d Cir. 1976)). The district court held that the strip search policy was constitutional under *Bell* v. *Wolfish,* 441 U.S. 520 (1979), reasoning that Logan had not shown that intoxicated detainees should be treated differently in this respect than other detainees, and that she had failed to carry the burden of showing that Sheriff Clements' policy was an exaggerated response to genuine security considerations. *Id.* at 505-06.

This appeal followed. Logan challenges the district court's action in granting directed verdicts and summary judgments on the various monetary claims, in denying all declaratory and injunctive relief, and in excluding or limiting some evidence.

II

We find no reversible error in any of the district court's rulings except those related to the claims growing out of the strip search. Specifically we affirm, on the basis of the district court's reasoning, its rulings that the evidence failed to show any violation of constitutional right in connection with Logan's detention pending arrival of Haig, or in connection with the refusal of permission to make telephone calls; that the magistrates were, in any event, entitled to judicial immunity in

respect of all monetary claims; that Officer Shortt was, in any event, entitled to a good faith immunity defense to the claim for monetary relief for denial of counsel; and that the evidence against Officer Shortt on the strip search was insufficient for submission to the jury.

III

With respect to the strip search claims, we find error requiring reversal and remand for further proceedings. Specifically we hold that on the evidence stipulated and adduced at trial the strip search policy promulgated by Sheriff Clements and enforced by his department was conclusively shown to be unconstitutional under the standards laid out in *Bell* v. *Wolfish*, 441 U.S. 520.

Strip searches of detainees are constitutionally constrained by due process requirements of reasonableness under the circumstances.

> In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Id. at 559. On the disputed and stipulated evidence, Logan's strip search bore no such discernible relationship to security needs at the Detention Center that, when balanced against the ultimate invasion of personal rights involved, it could reasonably be thought justified. At no time would Logan or similar detainees be intermingled with the general jail population; her offense, though not a minor traffic offense, was nevertheless one not commonly associated by its very nature with the possession of weapons or contraband; there was no cause in her specific case to believe that she might possess either; and when strip-searched, she had been at the Detention Center for one and one-half hours without even a pat-down search. An indiscriminate strip search policy routinely applied to detainees

such as Logan along with all other detainees cannot be constitutionally justified simply on the basis of administrative ease in attending to security considerations. *See Tinetti* v. *Wittke,* 479 F. Supp. 486, 490-91 (E.D. Wis. 1979), *aff'd,* 620 F.2d 160 (7th Cir. 1980).

The district court's contrary conclusion, reflected in its posttrial denial of all declaratory and injunctive relief, was in error. This necessitates reversal and remand for entry of an appropriate decree declaring unconstitutional the policy as it was stipulated to exist at the time of Logan's strip search, and granting a permanent injunction against its future enforcement in that form by those responsible.

In this connection, we take notice from the record in another case, *DeMier* v. *Arlington County,* Civ. Action No. 80-1086-A, slip op. at 2 (E.D. Va., May 12, 1981) (unpublished) that in December 1980, Sheriff Gondles revised the strip search policy on a trial basis, making searches mandatory only when probable cause exists to believe a particular detainee is concealing contraband. Notwithstanding that this revised policy or some other may be the currently existing one, Logan's claim and right to declaratory and injunctive relief are not thereby mooted. *United States* v. *W. T. Grant Co.,* 345 U.S. 629, 633 (1953); *United States* v. *Hunter,* 459 F.2d 205, 219 (4th Cir. 1972); *Lankford* v. *Gelston,* 364 F.2d 197, 202-03 (4th Cir. 1966); *Tinetti* v. *Wittke,* 479 F. Supp. at 488-90.

IV

Reversal and remand is also required in respect of the directed verdicts in favor of the defendants Arlington County, Sheriff Clements, and Deputy Sachtleben given during the jury trial of Logan's damages claims. Whether the verdicts were directed in favor of the individual defendants, Clements and Sachtleben, on the basis that the strip search policy as applied to Logan was constitutional, or on the basis that as to each the defense of good faith immunity had been established,[7] the

[7] *See* note 6 *supra.*

district court was in error. As we have indicated, the undisputed evidence established as a matter of law that the policy as applied was unconstitutional. That leaves only the good faith defense as a possibly valid basis, and neither would it suffice as a basis for a directed verdict.

In this type § 1983 action the good faith immunity of individual police officers is an affirmative defense to be proved by the defendant, *Gomez v. Toledo,* 446 U.S. 635, 640 (1980), under the test of police officer immunity to monetary liability expressed, for example, in *Pierson v. Ray,* 386 U.S. 547, 555-57 (1967). Therefore verdicts properly could have been directed for these two defendants on that basis only if the evidence established as a matter of law that each acted, the one in promulgating and maintaining, the other in carrying out, a policy that each, at the critical time, "reasonably believed [was] valid, [though it] was later held unconstitutional, on its face or as applied." *Pierson,* 386 U.S. at 555. We hold that the evidence did not conclusively establish this defense as to either Clements or Sachtleben, but that on the evidence adduced the issue of the good faith of each, in the special § 1983 sense, was one of fact for the jury under appropriate instructions as to the burden of proof and the substantive elements of the defense.

The issue as to Sheriff Clements is whether, given the knowledge of existing law with which he could fairly be charged as chief law enforcement officer of the County, he could reasonably have believed his policy then to be constitutionally valid. The issue as to Deputy Sachtleben is somewhat different. Had the evidence indisputably showed that she simply applied Sheriff Clements' policy as promulgated, we agree that her justifiable assumption of its presumptive validity would have established her good faith immunity defense. *See, e.g., Wallace v. King,* 626 F.2d 1157, 1161 (4th Cir. 1980). But the evidence was in dispute on this very issue. One of the critical, and certainly most obvious, elements in the *Bell v. Wolfish* balancing inquiry into the reasonableness of a strip search is "the place in which it is conducted." 441 U.S. at 559. It is apparently undisputed that the policy as promulgated by Sheriff Clements contemplated that strip searches would be conducted in areas effectively screened from general view.

While an enforcing officer might reasonably believe a policy with such a privacy aspect valid simply because it was promulgated by a superior, the reasonableness of her belief in its validity if it was applied in violation of that privacy aspect would present quite a different issue. We think that, as a matter of law, no police officer in this day and time could *reasonably* believe that conducting a strip search in an area exposed to the general view of persons known to be in the vicinity—whether or not any actually viewed the search—is a constitutionally valid governmental "invasion of [the] personal rights that [such a] search entails." *Id.* Whether the room in which Logan was searched was so exposed to general view was, on the evidence adduced, in direct dispute.

Upon remand, Logan is entitled to a judgment against defendants Clements and Sachtleben for all damages determined by a jury to have been proximately caused by the strip search, unless those defendants can establish before a jury their respective defenses of good faith immunity (or any others available to them) in accordance with this opinion. In discussing these concededly difficult factual issues of "good faith" and holding them not subject to resolution by directed verdict on the evidence adduced, we, of course, express no opinion on their merits, either on the evidence as presented on the earlier trial or as it may be presented upon remand.

As earlier indicated, Logan's strip search claim for damages against Arlington County has not been formally disposed of by any order of the district court of which we are aware, and on appeal the parties have disagreed as to whether it may have been formally abandoned in pretrial proceedings. Upon remand, this question must be addressed by the district court. First, it should rule whether, as a procedural matter, the claim has been abandoned or otherwise procedurally defaulted by Logan. If it is determined that the claim has not been so lost, then the court must address the question whether the strip search policy as promulgated and maintained by Sheriff Clements at the critical time was directly chargeable under Virginia law to Arlington County as its own policy. *See Monell* v. *Department of Social Services,* 436 U.S. at 690-95. If it is found

so chargeable, then Logan is entitled to a judgment against Arlington County for all damages proximately caused by the strip search as determined by a jury, the County being entitled to no immunity defense. *Owen* v. *City of Independence,* 445 U.S. at 638.

V

In view of our disposition, it is unnecessary to consider Logan's challenge to certain evidentiary rulings of the district court.

We find no merit in Arlington County's contention that all claims against it are barred by the one-year statute of limitations in Va. Code § 8,01-248 8.01-248 The applicable statute is Va. Code § 8.01-243A (1977) under whose two-year period the claims are not barred. *Johnson* v. *Davis,* 582 F.2d 1316, 1318-19 (4th Cir. 1978).

The judgment of the district court is affirmed in part and reversed and remanded in part for further proceedings in conformity with this opinion.

AFFIRMED IN PART
REVERSED AND
REMANDED IN
PART

Opposition

Office - Supreme Court, U.S.
FILED
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CLERK

No. 81-1042

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

J. ELWOOD CLEMENTS
and
CAROL J. SACHTLEBEN,

Petitioners,

v.

LUCY N. LOGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Thomas A. Guidoboni
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January 18, 1982

QUESTIONS PRESENTED

1. Was the United States Court of Appeals for the Fourth Circuit correct in concluding that under the circumstances of this case the strip search and visual body cavity inspection to which respondent was subjected were unreasonable under the balancing test set forth in Bell v. Wolfish, 441 U.S. 520 (1979)?

2. Did the United States Court of Appeals err in concluding that mere administrative convenience was an insufficient constitutional justification for the routine application of an indiscriminate strip search policy to a person arrested on a misdemeanor traffic offense, ordered detained for a maximum period of four hours, and

never commingled with the general jail population*/?

---

*/ Parties to this proceeding in the United States Court of Appeals for the Fourth Circuit were Lucy N. Logan as appellant and Norris Shealy, Earl L. Johnson, Jr., William F. Vance, J. Elwood Clements, James A. Gondles, Thomas W. Shortt, Carol J. Sachtleben, and Arlington County, Virginia, appellees.

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No. 81-1042

IN THE
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OCTOBER TERM, 1981

J. ELWOOD CLEMENTS
and
CAROL J. SACHTLEBEN,

Petitioners,

v.

LUCY N. LOGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Lucy N. Logan, respectfully requests this Court to deny the petition for a writ of Certiorari, seeking review of the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 660 F.2d 1007. The opinion of the United States District Court for the Eastern District of Virginia, denying declaratory and injunctive relief, is reported at 500 F. Supp. 502. No written opinion was rendered by the District Court when it granted directed verdicts in favor of petitioners on respondent's claims for damages, on August 7, 1980.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on October 7, 1981.

Jurisdiction of this Court is not conferred by virtue of 28 U.S.C. §1257(3), invoked by petitioners, as that statutory provision refers solely to review of final judgments or decrees rendered by the highest court of a state.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, ...

The Fourteenth Amendment to the United States Constitution, Section I, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

At about 7:30 p.m. on March 6, 1979, Lucy N. Logan, a practicing lawyer, and former Assistant Commonwealth Attorney for Arlington County, Virginia, was involved in a minor traffic accident. Based on his personal observation and the results of several field tests, Officer Shortt suspected Mrs. Logan had been drinking. He placed her under arrest for Driving while Intoxicated Va. Code Ann. §18.2-266, and caused her to

be transported to the Arlington County Detention Center, located less than a mile away. Immediately after her arrest, and again upon her arrival at the Detention Center, Mrs. Logan requested permission to telephone her friend and professional colleague, Lorelei Haig, with whom she had been just prior to the accident, and who resided within a mile of both the accident scene and the Detention Center. These requests were flatly refused.

Mrs. Logan arrived at the Detention Center at approximately 8:20 p.m. The special magistrate's office, police station, breathalyzer equipment, Sheriff's booking area and holding cells are located on the first floor of the Detention Center, all in a common area, except the magistrate's office which is in an adjoining room. From

8:20 until approximately 9:50 p.m., Mrs. Logan remained in this area without any search of her person, while the breathalyzer equipment was warmed up, her rights under the Virginia "implied consent law," Va. Code Ann. §18.2-268, were explained, arrest warrants were obtained, and a bond hearing was held. During this hour and a half, she made repeated requests to the police, deputy Sheriffs and special magistrates to be permitted to telephone Lorelei Haig. All of these requests were summarily denied.

At approximately 9:50 p.m. Special Magistrate Vance ordered that Mrs. Logan be released on her personal recognizance, but consistent with his practice in all cases where intoxication was alleged, Vance required that Logan be detained for four hours, unless a responsible person arrived

sooner to take custody of her. Mrs. Logan thereupon repeated her request to call Haig, and the magistrate again refused. Contrary to petitioners' assertions, Magistrate Vance made no notations about telephone calls on the commitment papers.

Mrs. Logan was then turned over to Petitioner Sachtleben, a Deputy Sheriff. Sachtleben also refused Mrs. Logan's immediate request for a telephone call. Instead, she required Mrs. Logan to surrender her personal property for inventory, then placed Mrs. Logan into a holding cell, located directly across from the booking counter and separated therefrom by windows, furnished with blinds.

Sachtleben ordered Mrs. Logan to take off all her clothes. Reluctantly, Mrs. Logan did so. Sachtleben ordered her to

turn around, bend over and expose her genital and anal areas. When Mrs. Logan refused, Sachtleben threatened to take her upstairs to the main jail where she would be made to submit to the search. Mrs. Logan then complied. Mrs. Logan testified that at the time of this search the venetian blinds screening the holding cell from the main booking area, where male deputies and police officers were present, were bent and damaged, such that persons could see in and out. To Logan, the search was humiliating, embarrassing and very frightening.

After examining Mrs. Logan's body, Sachtleben searched and returned her clothes, secured a telephone, and at approximately 10:15, finally placed a call to Lorelei Haig. Haig arrived at the Detention Center

in 15 minutes, but Logan was not released to her until 10:55 p.m.

Although there was no reason to suspect that Logan was carrying weapons or other contraband, and Petitioners have never claimed to the contrary, she was nevertheless strip-searched pursuant to a policy promulgated in January of 1974 by Petitioner Clements, the Sheriff of Arlington County. The policy required that all persons admitted to the detention center be subjected to strip searches and visual body cavity inspections without regard to any individual considerations or circumstances. At trial Clements justified this policy solely with the conclusory testimony that it was required in order to keep contraband out of the jail.

Mrs. Logan was tried and acquitted of both Driving while Intoxicated and Unreasonable

Refusal to submit to the breathalyzer. Thereafter, she filed this action, asserting violations of her constitutional rights under 42 U.S.C. §1983. Following jury trial, Judge Oren R. Lewis granted directed verdicts for the Petitioners on the damage claims, and subsequently denied Respondent's requests for injunctive and declaratory relief against Sheriff James Gondles, Petitioner Clements' successor in office. Logan v. Shealy, 500 F. Supp. 502 (E.D. Va. 1980). On appeal, in a unanimous opinion written by Judge Phillips, and joined in by Chief Judge Winter, and Senior Judge Haynesworth, the Fourth Circuit reversed as to these claims and remanded the case for entry of a declaratory judgment and injunction against Gondles, and for a new trial on the issue of damages against

Petitioners. Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981).

Retrial was set for December 9, 1981. Failing to obtain a stay of the mandate from the Fourth Circuit, Petitioners, sought on stay from the Chief Justice (A-480), on December 3, 1981, which was denied the following day. Petitioners then applied to Mr. Justice Rehnquist, who granted a temporary stay on December 8, and referred the matter to the full Court for consideration, 102 S. Ct. 284 (1981). On December 11, 1981, the application for a stay was denied and the temporary stay vacated.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE DECISION BELOW IS CONSISTENT WITH THE HOLDING OF AND PROPERLY APPLIES THE TEST ESTABLISHED IN BELL v. WOLFISH.

In Bell v. Wolfish, 441 U.S. 520 (1979) this Court responded affirmatively to "the question whether visual body-cavity inspections . . . can ever be conducted on less than probable cause." 441 U.S. at 560 (emphasis in original). Despite Petitioners' claim, the decision below does not contravene that ruling. The Fourth Circuit simply decided, based on the undisputed and stipulated evidence at trial that:

> an indiscriminate strip search policy routinely applied to detainees such as Logan along with all other

> detainees cannot be constitutionally justified simply on the basis of administrative ease in attending to security considerations.

660 F.2d at 1013. In this regard the instant case is merely the converse of Bell, holding no more than that a policy which always requires visual body cavity inspections, without a showing of any cause whatsoever is, on these facts, unconstitutional.

Indeed, the Fourth Circuit reached its conclusion following application of the balancing test articulated in Bell for determining the reasonableness of such searches. As stated by this Court, and applied by the Court of Appeals:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

440 U.S. at 559. Accord Logan v. Shealy, 660 F.2d at 1013.

Here, on one side of the scale is the most basic object of personal privacy, "the desire to shield [the naked body] from strangers." York v. Story, 324 F.2d 450, 455 (9th Cir. 1963), cert. denied, 376 U.S. 939 (1964). Weighed against this fundamental privacy is nothing more than a self-serving justification which fails to withstand even the most casual scrutiny.

Unlike the inmates in Bell, who, at the time of the search were members of the institution's population, Respondent, driving on the public highway*/ had no reason to

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*/ Although driving while intoxicated is admittedly a serious traffic offense, it is, after all, a traffic offense. In Virginia, where all crimes are divided into six classes of felonies and four classes of misdemeanors, it is not even designated as a class 1 misdemeanor. See Va. Code Ann. §§18.2-10 & 11. Unreasonable Refusal is simply not a criminal offense. United States v. Rowe, 599 F.2d 1319 (4th Cir. 1979). Moreover, the Sheriff's policy extended to all persons regardless of their alleged offense. Thus, it included within its purview persons charged with such "crimes" as eating on a subway, Fisher v. Arlington County, No. 80-1104-A (E.D. Va.); playing a stereo too loud, or writing obscene language on a check, DeMier v. Arlington County, No. 80-1086-A (E.D. Va.).

expect that she would shortly be incarcerated, and therefore, no motivation whatsoever to smuggle weapons or contraband into a jail. The potential breach of security is reduced even further where, as here, the period of detention is set at a maximum of four hours, and probably less.*/ Finally, since the entirety of Mrs. Logan's brief commitment was served in a cell segregated from the general population of the jail, and subject to constant monitoring through large windows, the possibility of smuggling contraband was virtually nil. Given these factors,

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*/ In this respect the instant case is similar to Carter v. Noble, 526 F.2d 677 (5th Cir. 1976), where the Court rejected as "frivolous" the claim that a haircut was required for purposes of sanitation since the jailer knew that Carter was about to be released.

and the availability of a metal detector,*/ it was neither surprising nor erroneous for the Court of Appeals to conclude on balance that:

> . . . Logan's strip search bore no such discernible relationship to security needs at the Detention Center that when balanced against the ultimate invasion of person rights involved, it could reasonably be thought justified.

660 F.2d at 1013. See Tinetti v. Wittke, 479 F. Supp. 486, 490-91 (E.D. Wis. 1979), aff'd, 620 F.2d 160 (7th Cir. 1980).**/

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*/ See Plaintiff's Exhibit 24. The existence of a less-intrusive alternative, while not determinative, is relevant to the reasonableness of the particular search method at issue. Bell v. Wolfish, 441 U.S. at 559 & n. 40.

**/ Petitioners erroneously argue that the decision in Tinetti preceded Bell v. Wolfish and is therefore of no value as precedent. Petition at 6. Tinetti was decided nearly six months after the Bell case, and although the published opinion does not mention Bell,

II. THE ISSUES RAISED BY THE PETITION ARE PRIMARILY FACTUAL IN NATURE.

Most of Petitioners' disagreement with the decision below amounts to no more than disputes over the facts and the inferences to be drawn from them. This alone renders the case an inappropriate one for the granting of certiorari. The Court has long recognized that:

> We do not grant a certiorari to review evidence and to discuss specific facts.

United States v. Johnston, 268 U.S. 220, 227 (1925). See Southern Power Co. v.

**/ (cont'd from previous page) the District Court had previously considered and distinguished the case. Tinetti v. Wittke, No. 79-C-447 (E.D. Wis., Aug. 10, 1979) (Memorandum and Order granting preliminary injunction), reprinted in Brief for Amicus Curiae, Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981) at Appendix A.

North Carolina Public Service Co., 263 U.S. 508 (1923). Moreover, in raising these factual issues, Petitioners ignore the significance of the procedural posture of the case. Since the trial court directed verdicts against Mrs. Logan, an appellate court is bound to view the evidence in the light most favorable to her, and to give her the benefit of all inferences which the evidence fairly supports, even though contrary inferences might reasonably be drawn. E.g., Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 696 & n. 6 (1962). Evaluating Petitioners' factual contentions in this light, one must conclude that they are at best matters of disputed evidence, to be resolved in Respondent's favor at this stage of the proceedings.

Petitioners first argue that the sheriff produced evidence of several incidents where strip searches uncovered contraband or weapons. In fact, Petitioners chose not to introduce reports of these incidents at trial, and did not mention them in their post-trial memoranda opposing injunctive relief.*/ Petitioners made no reference to them in either their brief or oral argument to the Fourth Circuit. It would be particularly inappropriate for this Court to grant discretionary review on the basis of facts never advanced in

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*/ See Vol. I, Joint Appendix, at J.A. 5, Item 86, Logan v. Shealy, supra.

the two courts below.**/

In addition, the reports themselves do not justify the policy promulgated by Clements and applied to Respondent. In sum, the reports describe incidents involving persons like those in Bell, who were members of the general jail population, and therefore had both motive and opportunity to smuggle contraband; searches performed on the basis of reasonable suspicion; or contraband found during less intrusive pat-down

**/ The District Court's pretrial order does provide that exhibits to which no objection was made would stand admitted. However, at the conference, the Court orally granted relief from this Order, as evidenced by the fact that Petitioner Clements did not file written objections to Plaintiff's Exhibits until the day of trial, Vol. I, Joint Appendix at J.A. 5, Item 75, Logan v. Shealy, supra, and objections were never filed by Petitioner

searches.*/ Respondent has never argued, and the Court below did not hold searches that of this nature or under these circumstances, were prohibited.

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*/ These incidents are inaccurately described in the Petition. Exhibits 1, 2 and 3 demonstrate on their face that a weapon was discovered by a search outside the clothing of the suspect, performed because the deputy was suspicious. In addition there is no record evidence of the nature of the offense with which the suspect was charged and no affidavit was ever submitted by the arresting officer. Exhibit 4 concerns a felony convict, committed to jail after revocation of bail, where suspected drugs were found as the result of a search of his pockets. Exhibit 5 does not indicate the nature of the search conducted. Exhibit 6 concerns a convict who surrendered to serve a sentence, where a thorough search of his clothing was conducted after suspected drugs were found in a bag he was carrying. Exhibits 7 and 8 relate to discovery of suspected drugs in a sock and a coat pocket, both of which were discovered without a strip search. Exhibit 9 does not indicate the nature of the (cont'd)

Petitioners next claim that the strip search policy is justified because Respondent or similar detainees might possibly be intermingled with the general

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*/ (cont'd from previous page) search performed nor the status of the prisoner. Exhibit 10 involves a convict on work release who was presumably strip searched, but nevertheless managed to smuggle suspected drugs into the jail. Exhibit 11 involves a subject who suspiciously resisted any search, and items discovered during a "pat-down." Exhibit 12 involves a convict surrendering to serve a sentence where suspected drugs were found in his pockets. Exhibit 13 is merely another report of the same incident. Exhibit 14 involves a convict surrendering to serve a sentence where suspected drugs were found in a pants cuff. Exhibit 15 involves no contraband at all and presumably occurred after a strip search. Exhibit 16 involves no contraband, and the health condition was obvious. Exhibit 17 occurred despite a strip search. Exhibit 18 involves a case where the police and deputy expressly articulate reasonable suspicions. Exhibit 19 involves suspected marijuana found during a "pat-down."

jail population under some conceivable circumstances. This is speculative at best.*/

Petitioners themselves eschewed this argument in the court below, asserting that the possibility that Logan or similar detainee might be commingled with the general jail population was "irrelevant" to the validity

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*/ In the transcript references cited by Petitioners, Clements simply describes the first floor area as "holding and receiving cells for misdemeanors and minimum security." J.A. Tr. 181. Sachtleben testifies that the holding cells were separated from the main area of the jail where long-term residents are kept by four or five floors of the building, and that by regulation no person was to remain in the booking area, including the holding cells, longer than 4 hours, the exact maximum period of Logan's detention. J.A. Tr. 193-94. Except for the general statement that prisoners are occasionally moved due to overcrowding, there was no evidence from which a court could infer that detainees like Logan would ever be mixed with the general jail population.

of the strip search policy. Brief of Appellees at 26, Logan v. Shealy, supra. More importantly, Respondent has never contended, nor did the Court of Appeals hold, that detainees who were about to be mixed with the general jail population, could not be subjected to a strip search.

Petitioners then make the dubious claim that there was reason to believe Logan was carrying contraband because her "alleged intoxication was of an unknown origin." Petition at 9-10. Once again Petitioners advance an argument presented to neither court below. Indeed, despite her acquittal of the offense of Driving while Intoxicated, Petitioners urged in their Brief to the Fourth Circuit that Respondent was "quite drunk," and further, that "it is irrelevant . . . that a DWI charge is not

a crime, which, by itself, would necessarily lead one to believe that the arrestee is likely to be carrying contraband or drugs." Brief of Appellees, at 17, 26, Logan v. Shealy, supra. Having advanced these positions below, Petitioners should not be granted a writ of certiorari on the basis of a complete about-face.*/

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*/ The statistics referred to by Petitioners "tell us very little about the risk associated with routine traffic stops." Pennsylvania v. Mimms, 434 U.S. 106, 119 (1977) (Stevens, J., dissenting). Moreover, whatever the degree of this risk, it has been substantially minimized by the decision in Mimms. This Court's legitimate concern for the officer's safety, which led it to approve a procedure where "The driver is being asked to expose to view very little more of his person then is already exposed," 434 U.S. at 111, can hardly be stretched to sanction "the serious intrusion on one's privacy occasioned by . . . [a visual (cont'd)

Lastly, the Petitioners chastise the Court of Appeals for noting that Respondent was in custody at the detention center for one and one-half hours without even a pat-down search. This statement is amply supported by the record. Mrs. Logan testified that she was in the same room on the first floor of the Detention Center for the entire time, except for two or three

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*/ (cont'd from previous page) body cavity] search." Bell v. Wolfish, supra, 441 U.S. at 563 (Powell, J., concurring in part and dissenting in part). Similarly, the single incident described in the Washington Post article, where a weapon was discovered during a thorough, but non-strip, search, simply demonstrates that the strip search policy was "excessive in relation to the . . . [security] purpose assigned to it." Id. at 538.

brief visits to the magistrate, located in the immediately adjacent room. J.A. Tr. 61-63, 68-70, 72, 75. Her testimony in this regard was substantially corroborated by Thomas Shortt, the arresting officer, an adverse party testifying on his own behalf. J.A. Tr. 198-202.

Whether the police or the Sheriff technically had custody over Mrs. Logan's person during this period is of no importance. What is significant, however, is that officers of neither organization found any reason to perform even the most cursory search during Mrs. Logan's unsecured presence for one and one-half hours in this area. Yet a strip search and body cavity inspection mysteriously became necessary when she was locked in a single cell separated from this area by

only glass windows and bars, but segregated from the general jail population by several floors of the building.

People v. Seymour, 416 N.E.2d 1070 (S. Ct. Ill. 1981), cited by Petitioners, does not support such a distinction. In Seymour the Supreme Court of Illinois upheld a strip search subsequent to Seymour's arrest for possession of a pistol. The Court went to some lengths, however, to limit the scope of its ruling to the facts of the case before it, stating:

> By approving a strip search incident to the custodial arrest of the defendant in this case we do not mean to adopt the broad language of United States v. Robinson, [414 U.S. 218 (1973)] and Gustafson v. Florida, [414 U.S. 260 (1973)] and do not permit the intensive intrusion of a strip search into one's privacy in all custodial arrests. In fact we here acknowledge that a strip search may be entirely unreasonable and a violation of constitutional rights when conducted incident to custodial

> arrests in certain situations. We are only saying that the arrest in this case was not one of those situations.

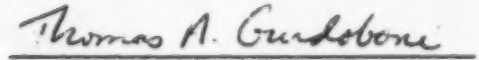
416 N.E.2d at 107.

Thus, neither the illusory factual distinctions urged by the Petitioners nor the decision in People v. Seymour call for a grant of certiorari.

CONCLUSION

For these reason, the petition for a writ of certiorari should be denied.

Respectfully submitted,



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No. 81-1042

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

J. ELWOOD CLEMENTS AND CAROL J. SACHTLEBEN
Petitioners,

v.

LUCY N. LOGAN
Respondent.

On Appeal from the United States Court of Appeals for the Fourth Circuit

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Was it error for the United States Court of Appeals for the Fourth Circuit to invalidate the practice of strip-searching DWI detainees upon confinement to the Arlington County Detention Center in light of this Honorable Court's decision and the principles announced in *Bell* v. *Wolfish*, 99 S. Ct. 1861 (1979), where a blanket policy of body cavity searches of all pretrial misdemeanants after each contact visit was held to be proper.

2. Was it error for the United States Court of Appeals for the Fourth Circuit to substitute its judicial judgment for the judgment of the Sheriff of Arlington County about the extent of the security interests affected in the Arlington County Detention Center and the necessity for the strip search procedure.

The parties hereto are J. Elwood Clements in his individual and official capacity; Carol J. Sachtleben, in her individual capacity, and Lucy N. Logan, in her individual capacity.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit decided October 7, 1981, Case No. 80-1815.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was made and entered on October 7, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

The facts of this case are undisputed. The policy initiated by the Sheriff of Arlington County required that all persons committed, by order of a magistrate or other judicial officer, to the Arlington County Detention Center submit to a visual strip search prior to being placed in the cellblock in the detention center. Respondent was ordered to be committed to the Arlington County Detention Center by order of a magistrate after warrants for DWI and unreasonable refusal under Virginia Code § 18.2-266-68 had been served upon her. The magistrate's order required that she be held for four hours or until a responsible person could come and take her home. After being booked, respondent was searched in accordance with the standard procedures and placed in a cell in a cellblock used to house the general jail population.

ARGUMENT

Respondent, in her statement of facts, would have you believe the decision of the Fourth Circuit is not inconsistent with the principles established in the holding in *Bell* v. *Wolfish*, 99 S. Ct. 1861 (1979).

Respondent would have you believe that the facts in this case are in dispute. There may have been facts in dispute concerning issues of the right to counsel, her right to make a telephone call, and there may have been a dispute as to whether she refused to take the breathalizer test. Those issues were resolved in the court below and are not before this court. The sole issue before this court deals with the policy established by the Sheriff requiring all persons committed to the Arlington County Detention Center to be visually strip searched prior to being incarcerated in that institution and these facts are not disputed.

She would also have you believe that the cellblock on the first floor of the Arlington County Detention Center were simply holding cells. The evidence was clear that the cellblock on the first floor was used for the purpose of holding any and

all incoming persons arrested for any type of offense from a misdemeanor to a serious felony; that the cellblock on the first floor was also used to house those prisoners who were being transported to and from the hospital or to other institutions from the cellblocks on the upper floors and was also used to house those persons incarcerated for various offenses by virtue of crowding in the facility; that at any given time, there were numerous persons charged with a variety of offenses in the first floor cellblock, including persons who had been to court, found guilty and sentenced and serving their time. While respondent wants to label the first floor cellblock as holding cells, the evidence is clear and undisputed that those cells housed the general jail population.

Bell v. *Wolfish, supra,* was a class action initiated by inmates of a federally operated short term detention facility in the southern district of New York. The detention facility was used to house persons charged with crimes but not yet brought to trial. That institution instituted a policy that required inmates to submit to a strip search and visual inspection of their body cavities after every contact visit with someone from outside the institution. This Court held that under those circumstances, such searches were not unreasonable under the Fourth Amendment but rather they were reasonable responses to legitimate security concerns and could be conducted in the absence of probable cause. The respondent in this case was in a position no different for constitutional purposes from the pretrial detainees in *Bell* v. *Wolfish, supra,* and, if anything, the detainees in that case were subject to more onerous conditions given the greater intrusiveness of a body cavity search. The Court nevertheless upheld such searches in the light of the central objective of prison administration safeguarding institutional security. The clear import of the Court of Appeals' decision is that strip searches may not be conducted without probable cause to believe that the subject of the search possesses weapons or contraband. No such requirement was set forth in *Bell* v. *Wolfish, supra,* and, in fact, the Court expressly held that strip searches need not be conditioned on probable cause. Nor was the result in *Bell* v. *Wolfish* predicated on a showing that searches were limited to those persons whose alleged offenses were "commonly associ-

ated by their very nature with the possession of weapons or contraband."

The Respondent, in her brief in opposition, would have you believe that the issues raised by the petition are primarily factual in nature. This begs the issue. The respondent was in a position no different from those detainees in the federally operated detention facility in the southern district in New York in the *Bell* case, *supra.* In fact, if anything, the search conducted on the respondent and the policy involved was a less obtrusive one than the one approved by this Court in *Bell.*

The decision of the Fourth Circuit Court of Appeals in this case has made clear that the import of its decision is that strip searches may not be conducted without probable cause to believe that the subject of the search possesses weapons or contraband, and this decision has already begun to have significant implication in other circuits. In the case of *Dufrin* v. *West Bloomfield Township Police, et al.,* District Court No. 80-72253 (C.A. No. 82-1002, 6th Cir., docketed Jan. 4, 1982), tried in the Eastern District of Michigan, Southern Division, *Logan* v. *Shealy, et al.,* 66 F.2d 1007 (4th Cir. 1981), was cited as authority to invalidate a visual strip search procedure instituted by the Sheriff of Oakland County to provide for the security of his institution. The facts in that case, briefly, are that on the 11th day of October, 1978, Caroline Dufrin was arrested on a valid warrant and charged with felonious assault. She was arrested by the West Bloomfield Township police and brought to the Oakland County Jail, which was maintained by the Defendant, Sheriff Spreen, and lodged there in accordance with Michigan law. After being booked in the Oakland County Jail and remaining in the booking area, she was taken to the women's detention area. She was then taken into a room within the women's detention area and behind a closed door was requested to remove her clothing and was visually searched but not touched by a woman detention officer. After the search, she was placed in a cell with the general female prison population. Based on that set of facts and based on the decision of the Fourth Circuit in *Logan* v. *Shealy, supra,* the district judge of the Eastern District of Michigan directed a verdict of liability against the Sheriff and sent the case to the jury on

damages alone, which resulted in a verdict in excess of $47,000.00. That case is presently on appeal to the Sixth Circuit Court of Appeals, styled *Dufrin* v. *West Bloomfield Township Police, et al.*, No. 81-1002, docketed January 4, 1982, and a request for certification directly to this Court will be made in order that it may be heard along with this case.

CONCLUSION

If the ruling of the Fourth Circuit Court of Appeals is allowed to stand the security of detention facilities will necessarily be impaired because a certain class of misdemeanor detainees, namely those charged with DWI and Refusal, cannot be thoroughly searched for weapons and contraband before being mixed with the other inmates. In fact, the decision goes beyond those persons specifically charged with DWI and Refusal. A plain reading of the Court of Appeals' opinion would indicate that no person charged with a misdemeanor offense can be searched for weapons or contraband other than upon probable cause. In reality, the decision of the Court of Appeals has had a more far reaching effect in the manner in which it has been applied outside the Fourth Circuit. As the decision heretofore set out by the United States District Court for the Eastern District of Michigan would indicate, the opinion has been expanded to include all persons arrested for all types of offenses.

Such a standard may expose law enforcement personnel and prisoners within the detention facilities to undue risk of bodily injury. There are many jails and detention facilities where persons charged with offenses ranging from misdemeanors to serious felonies must be housed and comingled together because of the physical layout or space limitations of those facilities. The result must be an increased threat to the lives and safety of the inmates and employees of all detention facilities. The situation is further aggravated and becomes more serious because of the lack of adequate staffing that exists in many jails and detention facilities because of financial constraints affecting governmental bodies nationwide. Moreover, it ignores this Court's admonition that the judicial branch

of government defer to the expertise of prison and law enforcement administrators in matters concerning internal order, discipline and internal security. How can detention officials effectively keep contraband and weapons out of their facilities and keep them safe for their personnel and other inmates if they can only make a thorough search when a detainee exhibits such extraordinary behavior that it gives rise to probable cause? As has already been stated, in our experience those persons concealing contraband and weapons take great pains to assure concealment, and in those instances officials will rarely find probable cause to search.

For the foregoing reasons, petitioners respectfully pray the petition for writ of certiorari be granted. The petitioners would also respectfully request that any action on this petition for a writ of certiorari be deferred until such time as a motion for certification, pursuant to 28 U.S.C. § 1254(3) can be made in the case of *Dufrin* v. *West Bloomfield Township Police, et al.*, now pending in the United States Court of Appeals for the Sixth Circuit, No. 82-1002, and that case can be heard along with this petition for a writ of certiorari.

Respectfully submitted,

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Amicus Brief

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No. 81-1042

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

J. ELWOOD CLEMENTS AND CAROL J. SACHTLEBEN
Petitioners,

v.

LUCY N. LOGAN
Respondent.

On Appeal for the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE NATIONAL SHERIFFS' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

The National Sheriffs' Association ("NSA") submits this brief amicus curiae in support of J. Elwood Clements' and Carol Sachtleben's Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit. All parties to this suit have given NSA written consent to the filing of this brief. Copies of such consents have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS

NSA is a non-profit corporation organized under the laws of the State of Ohio. Its membership consists of over 50,000 sheriffs, deputies, municipal, state and federal law enforcement officers and other criminal justice professionals. Included in this membership are law enforcement officials from approximately 3,041 separate sheriff's departments. Of the NSA total membership approximately 7,200 members reside in those states which comprise the Fourth Circuit.

NSA is principally concerned with encouraging and promoting the fair and efficient administration of justice through the establishment of nationwide standards, research, educational courses, publications and crime prevention programs.

It is noteworthy that of the 3,041 sheriff's departments represented by the NSA membership, with the exception of those in a few states, all are charged with the responsibility of administering their community's jail facilities. Accordingly, cases which interpret the proper procedures for safeguarding inmates and jail personnel are of particular interest to NSA.

In this regard, of great significance to the NSA membership was this Court's decision on May 19, 1979, which upheld the right of prison officials to conduct strip searches and visual inspections of prisoners after contact visits without probable cause or a reasonable suspicion that weapons, drugs or other contraband were secreted under the clothing of or within the bodies of prisoners, *Bell v. Wolfish* 441 U.S. 520 (1979). To many NSA jail administrators, this decision signaled the end of debate over the constitutionality of strip searches where concerns for internal security mandate a reliable procedure to prevent the introduction of weapons and contraband into the jail facility.[1] Moreover, strip searches, conducted in accordance with policies based on the *Bell* case, have proved extremely effective in maintaining the security of jail facilities.[2] Many county sheriff's departments and jail administrators continue to operate with limited jail facility space and personnel. To their departments alternative procedures such as metal detectors and x-ray machines are often prohibited by cost. Moreover, such electronic search procedures would prove less effective than visual strip searches in uncovering non-metallic forms of contraband. The visual strip search has proven essential to insuring the protection of inmates and law enforcement and jail personnel given the confusion and movement which accompanies booking rooms, holding cells and lock-ups and the

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[1] In this regard, NSA circulated its *Jail Officer's Training Manual* to its members which included techniques for strip searches based upon *Bell.* National Institutes of Corrections, 1980, National Sheriffs' Association.

[2] *Bell, supra* at 559.

concomitant understaffing which prevents the constant monitoring of prisoners and arrestees.

Since this Court's decision in 1979, numerous cases have distinguished and severely limited the holding of *Bell.* NSA jail administrators and sheriffs again and again have been subjected to the threat of personal liability and judicial confusion over the propriety of their internal security procedures.[3] In fact, a number of cases have been filed against NSA members which allege that strip searches conducted without probable cause are per se unconstitutional.[4]

Your amicus believes that the Fourth Circuit decision below is clearly at odds with this Court's holding in *Bell* and threatens to impair the security of detention facilities throughout the Fourth Circuit.[5] Moreover, a perpetuation of the Fourth Circuit's views in this field could have a disastrous effect countrywide. For these reasons NSA desires to briefly present to the Court, for its assistance, its views on the significant issues raised by Petitioners herein.

QUESTIONS PRESENTED, CONSTITUTIONAL PROVISIONS INVOLVED AND STATEMENT OF THE CASE

NSA adopts the questions presented, constitutional provisions involved and statement of the case, all as set forth in Petitioner's brief.

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[3] At least one circuit court appears to have decided a strip search case as if *Bell* never existed. The Seventh Circuit in adopting the decision of the District Court below in *Tineth v. Wittke,* 620 F.2d 120 (7th Cir. 1980), based its decision on a "least intrusive means" test which was clearly rejected by this Court in *Bell.* 479 F. Supp. 486, 490-91 (E.D. Wis. 1979). Moreover, as in the instant case, the decision of the Seventh Circuit would require a finding of probable cause prior to each strip search of arrestees prior to their commitment to the detention facility.

[4] See, e.g., *Duffrin* v. *West Bloomfield Township Police Dept., et al.,* No. 82-1002 (6th Cir., docketed Jan. 4, 1982); *Knoll* v. *Michael Chambers, et al.,* No. 80-01277 (C.C., Oakland County, Mich., filed April 23, 1980); *Jamison* v. *Anderson, et al.,* No. CI81-1300 (Common Pleas, Joas County, Ohio, filed May 22, 1981); The Washington Post, Feb. 3, 1982, at C1, col. 2.

[5] See *Duffrin, supra,* wherein the district judge of the Eastern District of Michigan directed a verdict of liability against the sheriff based solely on *Logan* v. *Shealy, et al.,* 660 F.2d 1007 (4th Cir. 1981).

ARGUMENT

THE PROHIBITION BY THE COURT OF APPEALS OF THE STRIP SEARCHING OF ALL ARRESTEES COMMITTED TO THE CUSTODY OF THE ARLINGTON COUNTY SHERIFF DEPARTMENT PRIOR TO INCARCERATION IN JAIL IS IRRECONCILABLE WITH THE PRINCIPLES ENUNCIATED IN *BELL V. WOLFISH.*

The finding by the Fourth Circuit Court of Appeal that the strip searching of all arrestees committed to its custody by Arlington County Sheriff Department prior to their placement in the jail is unconstitutional, is irreconcilable with the decision rendered by this Court in *Bell v. Wolfish,* 441 U.S. 520 (1979).

While the Court of Appeals purported to base its decision on the constitutional standards for strip searches enunciated in *Bell,* the Appellate Court misapplied those standards to the very similar strip search procedure at issue herein. *Logan v. Shealy, et al.* 660 F.2d 1007 (4th Cir. 1981). The plain effect of the Appellate decision below is to require that pre-trial detainees not be strip searched absent probable cause to believe arrestees are carrying weapons or contraband, irrespective of the sheriff's judgment that such searches are necessary. Yet this Court's decision in *Bell* is clearly to the contrary. *Bell,* supra, at 560.

In ruling that the strip search of Respondent was unconstitutional, the Court of Appeals failed to consider the significant governmental interests attending the proper administration of a jail facility and recognized by this Court in *Bell.*

> [C]entral to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves . . . Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

Id. at 546-48, citing, *Pell* v. *Procunier,* 417 U.S. 817 (1974).

Respondent and the Fourth Circuit have asserted numerous bases for ignoring this Court's holding in *Bell*. First, Respondent seeks to limit the holding in *Bell* by citing this Court's statement that the issue presented therein was "whether visual body-cavity inspections . . . can *ever* be conducted on less than probable cause." Respondent's Brief at 17, quoting *Bell*, supra, at 560. Yet, the practice in *Bell* was across-the-board searches of all pre-trial detainees upon their return from contact visits. And the very point at issue in *Bell* was that the vast majority of those searches were unaccompanied by probable cause.

Respondent and/or the Fourth Circuit also assert at least four reasons why the holding in *Bell* is not controlling in the instant case: (a) the crime of driving while intoxicated is not commonly associated with the possession of contraband, *Logan, supra,* at 1015; (b) Respondent had no motivation to conceal and smuggle contraband into the Arlington County Detention Center, Respondent's brief at 20-21; (c) at no time would Respondent or similar detainees be intermingled with the general jail population, *Logan, supra,* at 1013, Respondent's brief at 28-29; and (d) no one at the detention center had perceived a threat to security sufficient even to warrant a pat down search of Respondent for one and one-half hours prior to her incarceration, *Logan, ibid.,* Respondent's brief at 32-34.

The assertion that persons arrested for driving under the influence of intoxicants are unlikely to be concealing contraband, is mere speculation. The fact that Respondent was not found to have been concealing contraband does not undermine Petitioner's considered judgment that there exists a significant threat that arrested misdemeanants may be concealing contraband or weapons.[6]

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[6] No presumption arises that pre-trial detainees (or arrestees remanded to very brief custody), pose any lesser security threat than convicted inmates. Bell at 546, n. 28. In this regard it is noteworthy that this Court noted the operation of detention facilities is the peculiar province of the legislative and executive branches of government, not the judicial branch. See *Bell* at 548. See also FBI statistics as to the frequency of armed assaults upon police officers in the course of traffic stops, Petitioners' brief at 6, n. 2.

The argument that Respondent had no motivation to smuggle weapons of contraband into the jail because, during the time leading up to her arrest, she could not know that she might later be incarcerated, ignores the possibility that arrestees at the time of their arrest may possess contraband which cannot be detected through a simple frisk, and that they may not have the opportunity to dispose of the contraband prior to their incarceration.

The assertion that Respondent and other temporary detainees would not be intermingled with the general jail population is not supported by evidence. Even if all reasonable inferences are construed in favor of Respondent, the evidence proferred by Sheriff Clements and Deputy Sachtleban clearly shows that pre-trial detainees, regardless of the nature of the charge, are frequently transferred to the general jail population. Respondent herself testified that a female detainee was transferred from the holding cell where Respondent was detained to the general jail population upstairs. Joint App. II at 75. Both Sheriff Clements and Deputy Sachtleban testified that prisoners were transferred to the main jail complex if overcrowding ensued in the holding cells or the detainees could not post bond. Joint App. II at 194. Moreover, many county jails do not have facilities for sequestration of misdemeanor arrestees from the remainder of the jail population. Furthermore, it is specious to suggest that an arrestee who may be concealing weapons or contraband constitutes a threat to herself or the security of the institution as a whole only upon being intermingled with the rest of the jail population.

Finally, the argument that the failure to search Respondent for one and one-half hours prior to her commitment into Petitioners' custody establishes that Petitioners did not in fact believe that Respondent presented a threat to institutional security, is misplaced. Not until approximately 9:50 p.m., perhaps two hours after Respondent's arrest, did Petitioners receive a commitment card from Magistrate Vance remanding Respondent into Petitioners' custody. Joint App. I, at 28, 30. Prior to that time, respondent was in the custody of Thomas Shortt, an officer of the Arlington Police Department. Joint App. II at 68.

One may assume correctly that weapons or items of contraband may be concealed in such a manner as to escape detection by means of a frisk or pat-down search. As observed by this court in *Bell,*

> "[a] detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record and in other cases. E.g., *Ferraro* v. *U.S.,* 590 F.2d 335 (C.A. 6, 1978), *U.S.* v. *Park,* 521 F.2d 1381, 1382 (C.A. 9, 1975).

Bell, supra, at 981.

Yet Respondent evidently would place Petitioners in the Hobson's choice of either not searching at all for contraband possibly concealed within body cavities, or exposing themselves to clear liability by conducting such a search prior to an arrestee's appearance before a magistrate, who oftentimes may refuse to issue a warrant, and set the arrestee free. In any event, the Arlington County Sheriff's Department never assumes custody over arrestees unless they are arrested by Arlington County Deputy Sheriffs or are judicially committed into its custody.

In concluding that "Logan's strip search bore ... no discernable relationship to security needs at the Detention Center," Logan, at 1013, the Fourth Circuit Court of Appeals failed to consider Petitioners' legitimate concerns for internal security at the Arlington County Detention Center. As noted in the opinion below of the U.S. District Court of the Eastern District of Virginia:

> "[Respondent] offered no evidence to support her contention that intoxicated detainees should be treated differently than other detainees."

Logan v. *Shealy,* 500 Fed. Sup. 502, 505 (E.D. Va. 1980).

Moreover, the holding of the Fourth Circuit Court of Appeals also is clearly at odds with the judicial standard for

review of internal jail security procedures articulated in *Bell.* There is no record evidence to support the proposition that the strip search of Respondent was imposed for the purpose of punishment or retribution, *Bell, supra,* at 538-39, which would invalidate the protections of the due process clause of the Fifth and Fourteenth Amendments.

Of course, it also is asserted that the search was unreasonable under the protections afforded by the Fourth Amendment. Yet as this court has noted, "even when an institutional restriction infringes a specific constitutional guarantee, such as the [Fourth] Amendment, the practice must be evaluated in light of the central objective of prison administration, safeguarding institutional security." *Bell,* supra at 473. Even assuming that in the instant case there was no probable cause or reasonable suspicion to believe that Respondent was concealing contraban[illegible] a factor which, absent exigent circumstances, would inv[illegible]ate the search as applied to unincarcerated individuals—the unfortunate fact of life is that "a detainee simply does not possess the full range of freedoms of an unincarcerated individual." *Bell, supra* at 546, 547, n.29.[7]

Given that the standard of review articulated in *Bell* does not mandate the presumption that pre-trial detainees (or arrestees committed to very brief custody) pose insignificant security threats either to themselves or to other persons in a detention facility, see *supra,* at n. 6, Respondent simply failed to meet the heavy burden of overcoming the asserted constitutionality of practices and procedures adopted by "expert administrators on matters on which they are better informed. . . ." *Bell,* supra, at 544.

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[7] In essence, Respondent appears implicitly to be challenging the initial judicial decision that she be committed to the custody of petitioners, or petitioners' decision that Magistrate Vance's committant order necessitated her incarceration, as opposed to providing her with transportation home, allowing her to remain free to roam the booking area, or instructing staff to otherwise attend and monitor respondent outside the cellblock area. Yet, once Respondent was committed to the sheriff's custody, for constitutional purposes, she stood on equal footing with other pre-trial detainees at the Arlington County Detention Facility and the detainees of the Metropolitan Correctional Center in Bell.

This case requires a delicate balancing of the necessarily diminished freedoms of pre-trial detainees against the professional determination by jail administrators that given security measures are rationally related to the achievement of the legitimate governmental interest of maintaining internal jail security. The Fourth Circuit Court of Appeals has failed to recognize that this court's holding in *Bell* does not require the implementation of less restrictive alternatives to a strip search, at least when alternatives such as using a metal detector would not prevent the smuggling of various kinds of contraband; and when, as in the instant case, there is no record evidence that the strip search procedure is generally inefficacious or implemented for punitive reasons. *Bell,* at 559, n.40; 560.

CONCLUSION

On March 6, 1979, Respondent Logan was placed under arrest on suspicion of driving while intoxicated, transported to the Arlington Police Station for a breathalizer test and later arraigned before a Magistrate who issued warrants against her for DWI and unreasonable refusal.

Immediately upon the issuance of warrants, the Magistrate committed Respondent to the Sheriff's custody. The conditions of commitment required Respondent to remain in custody for four hours or until such time as a reasonable person could come and get her. Some five minutes later, Respondent was taken to the Arlington Detention Center where a matron took her to one of five first floor cells, conducted a strip search and secured her in that cell. This search was conducted in compliance with the Sheriff Department's internal regulations which were implemented due to Petitioner's prior experience that misdemeanor arrestees potentially carry weapons or contraband. Furthermore, no evidence was adduced at trial to indicate that the search was observed by third parties, conducted under unsanitary conditions, or that Petitioners attempted to humiliate, degrade or punish Respondent. See, *Daugherty* v. *Harris,* 476 F.2d 292,295 (10th Cir. 1973).

There was not one scintilla of evidence produced by Respondent that the search as conducted was other than a reasonable response to genuine security considerations that were no less significant than those which mandated a similar strip search policy at issue in *Bell.*

Nonetheless, the Appellate Court substituted its opinion of proper security measures for that of expert jail administrators and required a finding of probable cause prior to all strip searches of misdemeanant arrestees. This holding is not only at odds with the holding of *Bell,* but threatens the order and safety of detention centers throughout the jurisdiction of the Fourth Circuit.

Implicit in the holding of the Appellate Court below is the notion that internal security of detention centers may adequately be protected through a policy which requires a showing of probable cause prior to a strip search being conducted. In failing to consider the informed judgments of experts, the Court below mandated an unworkable requirement which unduly jeopardizes the safety of inmates and jailors. The decision below does not acknowledge that arrestees are unlikely to tip off police officers and jailors through some suspicious activity that weapons or contraband may be sequestered in arrestees' clothing or bodies. Moreover, many NSA sheriff departments lack sufficient numbers of jail personnel to closely monitor misdemeanor arrestees or sequester them apart from those charged with more serious crimes in lieu of conducting a thorough search.

It is particularly important to note in light of the significant threat to detention center internal security which the permanent injunction of a blanket strip search policy creates, that the decision of the Court below does not stand alone. The Seventh Circuit in *Tinetti* also permanently enjoined a strip search policy which did not condition the search upon probable cause. Moreover, that court also required that the adoption of any security procedure which has the potential of infringing one's personal liberties must be based upon a demonstration of compelling need. Hence, the internal security of detention centers in at least eight states is now jeopardized by the failure of the Circuit Courts to heed the precedent established by *Bell.*

For the foregoing reason your amicus respectfully prays this Court to accept the petition for a writ of certiorari.

Respectfully submitted

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